

REMARKS

Currently claims 1-3, 7-12, 14, 21-25, 27, 28 30, and 37-44 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 5,624,427 (Bergman et al.) in view of U.S. Pat. No. 4,870,725 (Dubowik). Claims 6, 15, 16, 18, 31, 32, and 34 are objected to as being dependent upon a rejected base claim, but are indicated as being allowable if rewritten into independent form including all of the limitations of the base claim and any intervening claims. Favorable reconsideration of the rejections and allowance of the present application in view of the following remarks are respectfully requested.

The Office Action states that Bergman et al teaches generally sinusoidal elastically stretchable fastener material with a non-woven fastener material 54 falling within the depressions formed by the layer 53, and further states that the difference between Bergman et al. and the instant claims is that the fastener material is on the peaks as well as in the depressions. The Office action further states that Dubowik teaches that there is an advantage in lessening the exposure of fastener material by removing it from the elevated regions because it provides for enhanced selective engagement and inherent lessening of the opportunity of undesired engagement. At page 3, the Office action states that "it would have been obvious to remove the fastener material from the elevated regions [of Bergman et al.] in view of Dubowik teaching that it is desirable to have the fastener material in regions that are depressed so as to have improved selective engagement and inherent lessening of the opportunity of undesired engagement."

Applicants respectfully disagree with the alleged teachings of Dubowik, and the conclusions drawn therefrom.

As an initial matter, as noted above, the Office Action states on the one hand, at page 3, that Dubowik teaches that removing fastener material from the elevated regions provides enhanced selective engagement, while on the other hand, at page 4, the Office Action states that Dubowik teaches that inclusion of fastener material in depressed regions is desirable so as to have enhanced selective engagement. Applicants respectfully assert that removal of fastener material from elevated regions and inclusion

of fastener material in depressed regions are separate teachings which should be addressed separately, and are susceptible to mixture due to the way the Dubowik fastener operates.

Applicants respectfully assert that the issues regarding the teachings of Dubowik are better addressed in the context of viewing the fastener material of Dubowik as not being positioned in a “elevated” or “depressed” region, since the bi-stable member of Dubowik alternates between positions depending upon its status. In Dubowik, the bi-stable member initially protrudes towards the other surface that supports the fastener material, and then is depressed into a cavity after the fasteners have been aligned. See, for instance, col. 3, lines 55-60 (“In use, the two portions 32, 34 are positioned opposite one another, thus forcing the portions 32, 34 into engagement while simultaneously pushing on the bi-stable member 28, which ultimately causes member 28 to go over center and flip towards its second bi-stable state of FIG. 4 with the facing surfaces 22, 24 held flush together by the biasing force of the member 28 trying to pull into the hole 26 and assume its full second bi-stable position”).

A closer inspection of the operating principles of Dubowik indicates that the result which would allegedly motivate one of skill to utilize the teachings of Dubowik (i.e. improved selective engagement) is not the result of the presence or absence of fastening material on certain portions of the bi-stable member, but rather the positioning and alignment of the bi-stable member and hole combined with the actions of the bi-stable member itself. Therefore, the bi-stable member of Dubowik cannot be discarded, since, as stated in the prior response, such discarding would render Dubowik inoperative.

As noted above, the bi-stable member in Dubowik alternates between two positions: an initial position in which the portion of the member carrying the fastener material protrudes outward, and then a second position in which the bi-stable member attempts to fill the hole that the bi-stable member arches over. Applicants respectfully assert that, in the initial position, it is just as reasonable to assert that Dubowik teaches fastener material on “elevated” regions, since in the initial position the bi-stable member protrudes outward. Therefore, Dubowik is ambiguous at best as to whether fastener

material should be positioned on "elevated" or "depressed" regions when applied to a reference that does not alternate between protrusion and depression.

Moreover, the bi-stable member does not move inward until after the fastener material has been aligned with the fastener material which "pushes" the bi-stable member inward. Only at that point does the fastener material fall in a "depressed" region, at which point the material is already "forc[ed]" into engagement." If the material is already in engagement due to carefully aligning the bi-stable member with the other surface, then there is no need to avoid misalignment/improper fastening, and the alleged motivation to combine is lacking.

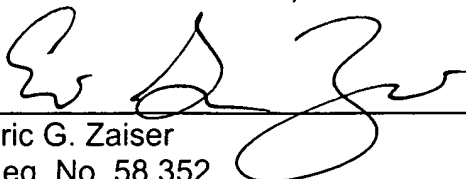
Therefore, as noted above, (1) Dubowik does not teach the removal of fastener material from elevated regions, since the status of a region as "elevated" or "depressed" changes in Dubowik, and (2) presence or absence of fastener material on a putative "elevated" or "depressed" region does not provide for enhanced selective engagement or avoiding misalignment in Dubowik since such engagement is achieved by positioning and operation of the bi-stable member.

In summary, Applicants submit that the presently pending claims patentably define over the prior art of record and are in complete condition for allowance. Should any issues remain after consideration of this response, however, then Examiner Brittain is invited and encouraged to telephone the undersigned at his convenience.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Respectfully submitted,

DORITY & MANNING, P.A.


Eric G. Zaiser
Reg. No. 58,352
DORITY & MANNING, P.A.
P.O. Box 1449
Greenville, SC 29602
(864) 271-1592
(864) 233-7342

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